

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

BIG LOTS, INC., *et al.*,

Debtors.

Chapter 11

Case No. 24-11967 (JKS)

(Jointly Administered)

**Obj. Deadline: December 30, 2024 at 11:00  
a.m. (ET)**

**Hearing Date: December 30, 2024 at 11:00  
a.m. (ET)**

**Related Doc: 1437**

**RENEWED OBJECTION AND RESERVATION OF RIGHTS OF WPG  
MANAGEMENT ASSOCIATES, INC. TO THE  
PROPOSED SALE TRANSACTION WITH GORDON BROTHERS RETAIL  
PARTNERS, LLC AND OTHER DESIGNATED BUYERS**

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WPG Management Associates, Inc. (“WPG Management”), by its undersigned counsel, Frost Brown Todd LLP and Law Office of Suan E. Kaufman, LLC, files this renewed objection and reservation of rights (this “Renewed Objection”) to the newly proposed sale transaction set forth in the above-captioned debtors’ (the “Debtors”) recently-filed *Motion for Entry of an Order (I) Approving Sale of Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (II) Authorizing the Debtors to Enter into and Perform Under the GBRP APA, (III) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* (Docket No. 1437) (the “GBRP Sale Motion”).<sup>1</sup> In support of this Renewed Objection, WPG Management respectfully states:

**BACKGROUND**

1. The Debtors seek authority to enter into a sale (the “Proposed GBRP Sale”) of

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed in the GBRP Sale Motion.

substantially all of their assets to Gordon Brothers Retail Partners, LLC (“GBRP”) on an expedited basis. *See Motion to Shorten Notice of Motion of Debtors for Entry of an Order (I) Approving Sale of Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (II) Authorizing the Debtors to Enter into and Perform Under the GBRP APA, (III) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief*, Docket No. 1442. The Proposed GBRP Sale purportedly represents an attempt by the Debtors to capture value for its remaining assets following the failure of the initial going concern sale (the “Nexus Proposed Sale”) to Gateway BL Acquisition, LLC (together with its affiliates, including Nexus Capital Management LP, “Nexus”) pursuant to the *Order (I) Approving the Asset Purchase Agreement, (II) Authorizing and Approving the Sale of Certain of the Debtors’ Assets Free and Clear of All Claims, Liens, Rights, Interests, Encumbrances, and Other Assumed Liabilities and Permitted Encumbrances, (III) Authorizing and Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* (Docket No. 1232) (the “Nexus Sale Order”).

2. As an initial matter, WPG Management notes there seems to be some inconsistencies within the GBRP Sale Motion and the proposed sale order attached as Exhibit B to the GBRP Sale Motion (the “Proposed Sale Order”). Specifically, it is not entirely clear to WPG Management who is purchasing the Debtors’ assets, which assets are being purchased or exactly what roles GBRP or Variety Wholesalers, Inc. (“Variety”) will play in connection with the proposed sale.<sup>2</sup> With only

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<sup>2</sup> See, e.g., Asset Purchase Agreement, attached as Exhibit 1 to the Proposed Sale Order (the “GBRP APA”):

“WHEREAS, the Selling Entities desire to sell, convey, assign, and transfer to Buyer (and one or more entities designated by Buyer (each a “**Designated Buyer**” and collectively, “**Designated Buyers**”), as applicable), all of the Assets, and Buyer (and Designated Buyers, as applicable), desire to (i) purchase, acquire and assume, or designate one or more Designated Buyers to purchase, acquire and assume all of the Assets and all of the Assumed Liabilities (and no other Liabilities), (ii) designate for sale by Agent the Designated Assets pursuant to the Agency Agreement

limited time to review and evaluate the intricacies of this newly proposed and highly negotiated transaction, WPG Management hereby adopts and incorporates by reference the arguments, points and authorities raised in the *Objection and Reservation of Rights of WPG Management Associates, Inc. to the Notice of Proposed Assumption and Assignment of Executory Contracts or Unexpired Leases and Cure Amount and Proposed Sale Transaction* (Docket No. 908) (the “Initial Objection”), which was filed in connection with the Nexus Proposed Sale.

3. As set forth in the Initial Objection, Debtor Big Lots Management, LLC, as lessor, and WPG Management, as lessee, are parties to that certain Lease, dated April 7, 2023 (the “Office Lease”), for office space on the 4<sup>th</sup> floor (the “Leased Premises”) of the building located at 4900 East Dublin Granville Road, Columbus, Ohio (the “Headquarters”).

4. The Debtors and WPG Management worked in good faith to address the issues raised by WPG Management in the Initial Objection. Specifically, the parties negotiated a provision of the Nexus Sale Order to reserve for later adjudication by this Court, to the extent necessary, the concerns of WPG Management that WPG Management has raised repeatedly throughout these chapter 11 cases regarding the impact of section 365(h) of the Bankruptcy Code. Specifically, the Debtors and WPG Management agreed to language that was included in the Nexus Sale Order at paragraph 71 that specifically provided that the Headquarters may not be transferred free and clear of the Office Lease “until either (a) this Court on notice and a hearing has entered a further order approving such transfer of the Headquarters free and clear of any interest in the Office Lease or (b) a

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pursuant to a store closing sale initiated by the Selling Entities (the “**Store Closing Sale**”), and (iii) consummate such other transactions as are contemplated by this Agreement and the other Transaction Documents, in each case, upon the terms and conditions hereinafter set forth (with all such transactions described in (i)-(iii) referred to as the “**Transaction**”).”

The Designated Buyers are not identified at this point in time.

settlement is reached, and notice of which is filed on the Bankruptcy Court's docket, among WPG, Buyer and Seller pursuant to which each agree to such transfer free and clear." *See* Nexus Sale Order at ¶ 71. The Nexus Sale Order further reserved WPG Management's rights regarding the Office Lease notwithstanding entry of the Nexus Sale Order. *Id.*

5. The Proposed Sale Order, which was filed with this Court as an exhibit to the GBRP Sale Motion, currently contains the above previously-negotiated provision:

WPG Management Associates, Inc. Notwithstanding anything to the contrary in this Sale Order or the APA, the real property located at 4900 E Dublin Granville Rd., Westerville OH 43081 (the "Headquarters") shall not be transferred to the Buyer or its affiliates free and clear under Section 363(f) of the Bankruptcy Code of that certain leasehold interest (the "Lease") of WPG Management Associates, Inc. ("WPG") at the Headquarters until either (a) this Court on notice and a hearing has entered a further order approving such transfer of the Headquarters free and clear of any interest in the Lease or (b) a settlement is reached, and notice of which is filed on the Bankruptcy Court's docket, among WPG, Buyer and Seller pursuant to which each agree to such transfer free and clear. All rights of WPG, Buyer and Seller are reserved notwithstanding entry of this Sale Order.

*See* Proposed Sale Order at ¶ 89.

6. However, unlike the transaction contemplated by the Nexus Sale Order, WPG Management submits that the GBRP APA included as Exhibit 1 to the Proposed Sale Order contains inconsistencies as it relates to any transfer of the Headquarters. Pursuant to Section 2.01(a)(i) of the GBRP APA, the Proposed GRBP Sale purports to include the transfer of "all offices, and processing, distribution, storage, warehousing, and other facilities" to GBRP, which presumably includes the Headquarters. Despite the terms of the documents filed with this Court, Section 3.01(b) of the GBRP APA provides that the Debtors and GBRP are to work cooperatively to market and sell the Headquarters and provides for a breakdown in the distribution of proceeds from any such sale.

7. However, on a December 29, 2024 telephone call with counsel for GBRP, Mr. Fox, Mr. Fox clarified and confirmed to counsel for WPG Management his understanding that the Headquarters was not intended to be sold or otherwise included in transferred assets pursuant to the GBRP APA.

**RENEWED OBJECTION AND RESERVATION OF RIGHTS**

8. As detailed in the Initial Objection, any sale of the Headquarters may not be free and clear of the Office Lease. WPG Management operates its business headquarters from the Leased Premises and employs approximately 158 individuals with respect to its operations at the Leased Premises. Any attempted sale of the Headquarters “free and clear” of the Office Lease would severely interfere with the business operations of WPG Management and be contrary to the protections afforded to WPG Management under section 365(h) of the Bankruptcy Code.

9. WPG Management specifically requests that the provision currently included in paragraph 89 of the Proposed Sale Order be carried over to the final form of sale order, and further requests that such provision be modified simply to clarify that this language applies not only to GBRP as Buyer but also any subsequently Designated Buyer(s) for the Headquarters.

10. In addition to the issues raised in the Initial Objection, WPG Management believes that the inconsistencies in the GBRP APA regarding the sale of the Headquarters should be addressed and resolved prior to entry of the Proposed Sale Order.<sup>3</sup>

11. WPG Management reserves any and all rights to supplement and/or amend this

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<sup>3</sup> As discussed above, the GBRP APA as currently drafted purports to at once transfer the Headquarters to GBRP while simultaneously providing for a joint marketing effort between the Debtors and GBRP with the proceeds of such sale to be shared between the Debtors and GBRP. Either (i) the Headquarters is being transferred to GBRP as part of the Proposed GBRP Sale, or (ii) the Headquarters is excluded from the Proposed GBRP Sale and will be sold to a third party purchaser at a later date.

Renewed Objection and expressly reserves the right to assert any further objections with respect to the Proposed GBRP Sale, the Proposed Sale Order, the GBRP APA and any subsequently Designated Buyers as it deems necessary or appropriate. Nothing in this Renewed Objection is intended to be, or should be construed as, a waiver by WPG Management of any of its rights under the Office Lease, the Bankruptcy Code, including sections 365(h) of the Bankruptcy Code, or applicable law. WPG Management expressly reserves all such rights.

**CONCLUSION**

**WHEREFORE**, WPG Management respectfully requests that this Court sustain this Renewed Objection and grant WPG Management such other and further relief as this Court deems just and appropriate under the circumstances.

*[Signature Page Follows]*

Dated: December 30, 2024  
Wilmington, Delaware

Respectfully submitted,

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